

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 722/2018

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS. FAREEHA PAUL ... MEMBER(E)

Said Shah S/O Main Muhammad Shah (Ex-PST), Government  
Primary School, Shamilat Mardan R/O Village Bakri Banda, District  
Mardan. .... (Appellant)

Versus

1. The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar.
2. The District Education Officer (Male), Mardan.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Muhammad Adam Khan  
Advocate

... For appellant

Mr. Naseer Ud Din Shah  
Asstt. Advocate General

... For respondents

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Date of Institution.....25.05.2018  
Date of Hearing.....10.10.2022  
Date of Decision.....10.10.2022

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against impugned order dated 07.05.2015, whereby the appellant is awarded major penalty of removal from service w.e.f 17.12.2014.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Primary School Teacher (PST) by the District Education Officer (Male), Mardan (Respondent No. 2) on 29.06.2009 and



posted in Government High School, Faqir Killi, Mardan. The appellant alongwith other persons was charged and arrested in a criminal case under Section 489-F PPC vide FIR No.387 dated 20.12.2012, of Police Station Saddar, Mardan. Resultantly he was placed under suspension by DEO (Male), Mardan vide letter dated 31.01.2014. The DEO (Male), Mardan awarded the appellant with punishment of removal from service vide impugned order dated 07.05.2015, which was never communicated to him. While pursuing the fate of disciplinary case, the appellant came across the impugned order on 01.07.2015 and preferred departmental appeal to Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar (Respondent No. 3) on 19.08.2015. His appeal was rejected vide letter dated 03.12.2015, which was not conveyed to the appellant and he learnt about it on 23.04.2018. Aggrieved from that, the appellant submitted service appeal on 25.05.2018.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the case in detail and contended that impugned order was void as the appellant was not afforded the right of defense and he was condemned unheard. He argued that the appellant was neither issued a charge sheet and statement of allegations, nor any show cause notice and hence the entire proceedings of removal were against law. He contended that even the impugned order was not sent to the appellant on his residential address, rather the same was sent to the Head Master of his school who did not convey the same to the appellant. He



invited the attention to the FIR, through which he was charged malafidely, and latter on acquitted by the Judicial Magistrate Mardan vide order dated 12.06.2015. He contended that as the appellant was in judicial lockup, he could not attend to his official duty. He applied for leave, the fate of which was not communicated to him.

5. The learned Assistant Advocate General, on the other hand, contended that after fulfilling of codal formalities the appellant was removed from service vide order dated 07.05.2015. He admitted that removal order was communicated to the appellant through his Head Master. He informed that absence notices were published in daily Mashriq and Daily Express on 12.04.2015. He further contended that proper notices for resuming the duty were issued but the appellant neither personally appeared nor submitted written justification and did not resume his duty as he was ordered. He further informed that after being acquitted from the charges as laid down in FIR against the appellant, he was reinstated in service with effect from the date of his suspension vide order dated 30.05.2014 but he did not resume his duties. He therefore requested for the dismissal of the appeal.

6. After hearing the arguments and going through the record presented before us, it transpires that respondent department placed the appellant under suspension from government service in the light of FIR filed against him till the decision of the court. It would have been in the fitness of the matter that the respondents should have waited for the outcome of the court case before taking any action against the appellant but instead they proceeded against him without fulfilling the procedure as given in Rule-9 of the Government Servants (Efficiency & Discipline) Rules 1973 and awarded him major penalty of removal from service. Instead of serving the notices at his



residential address, which was a requirement of the above Rules, the appellant was issued notices on the address of his Head Master/School, which is clear deviation of the provision of Rule-9 of the Rules and thus the impugned action is not sustainable.

7. In view of the facts narrated above, the appeal in hand is allowed and the impugned order dated 07.05.2015 is set aside. The appellant is reinstated into service w.e.f 17.12.2014 with all back benefits. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10<sup>th</sup> day of October, 2022.*



**(KALIM ARSHAD KHAN)**

**Chairman**



**(FAREEHA PAUL)**

**Member (E)**

**Service Appeal No. 722/2018**

1. Mr. Muhammad Adam Khan, Advocate for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 04 pages, we arrived at a conclusion that the respondent department placed the appellant under suspension from government service in the light of FIR filed against him till the decision of the court. It would have been in the fitness of the matter that the respondents should have waited for the outcome of the court case before taking any action against the appellant but instead they proceeded against him without fulfilling the procedure as given in Rule-9 of the Government Servants (Efficiency & Discipline) Rules 1973 and awarded him major penalty of removal from service. Instead of serving the notices at his residential address, which was a requirement of the above Rules, the appellant was issued notices on the address of his Head Master/School, which is clear deviation of the provision of Rule-9 of the Rules and thus the impugned action is not sustainable. In view of the facts narrated above, the appeal in hand is allowed and the impugned order dated 07.05.2015 is set aside. The appellant is reinstated into service w.e.f 17.12.2014 with all back benefits. Parties are left to bear their own costs. Consign.

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(KALIM ARSHAD KHAN)  
Chairman

  
(FAREEHA PAUL)  
Member (E)

DEA  
P1 fair

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 722/2018

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MISS. FAREEHA PAUL ... MEMBER(E)

Said Shah S/O Main Muhammad Shah (Ex-PST), Government  
Primary School, Shamilat Mardan R/O Village Bakri Banda, District  
Mardan. .... (Appellant)

Versus

1. The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar.
  2. The District Education Officer (Male), Mardan.
  3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
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*the above*

requirement of (E&D) Rules, the appellant was issued notices on the address

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**(KALIM ARSHAD KHAN)**

**Chairman**

**(FAREEHA PAUL)**

**Member (E)**

خارجی

سازمان اسناد و کتابخانه ملی

شماره 3873 در صفحه 6/24 ص 4894 (82)

بازرسی و تصدیق

در تاریخ 13/10/1357

فایده این سند در خصوص ...  
فهرست کارهای انجام شده ...

مهر و امضا

تاریخ

13/10/57

محل مهر

توضیحات: ...

36 سال ...

تعمیرات ...

در تاریخ ...

مهر و امضا ...

تاریخ ...

در تاریخ ...

اسناد و کتابخانه ملی

24/11.2021

Proper D.B is not available, therefore, case is adjourned to 28/2/2022 for the same as before.

28-2-22

Due to Retirement of the Hon.ble Chairman the case adjourned on 14-8-22

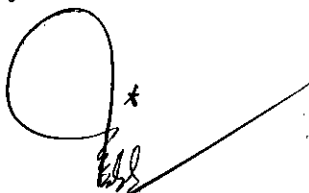
  
Reader

  
Reader

14.06.2022

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 15.08.2022.




(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

15.8.22


Due to Summer vacation, the case is adjourned to 10.10.22 for the same.

  
Reader

05.08.2021

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Sajid Khan ADO for respondents present.

Former made a request for adjournment to further prepared the brief. Adjourned. To come up for arguments on 10.09.2021 before D.B

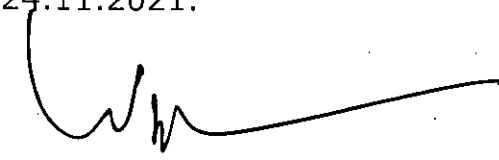
  
(Atiq Ur Rehman Wazir)  
Member (E)


  
Chairman

10.09.2021

Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.


Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 24.11.2021.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

23.11.2020


Due to non-availability of D.B, the case is adjourned to 03.02.2021 for the same as before.

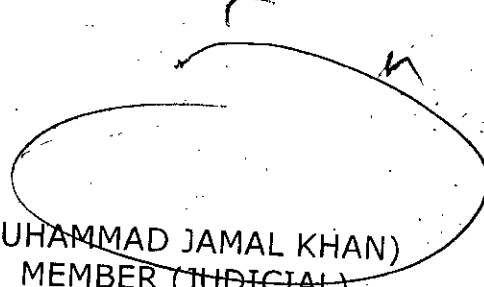
  
Reader

03.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Sajid, ADEO (Litigation) for the respondents are also present.

The bare perusal of the impugned order dated 09.01.2015 would reveal that the impugned order has been made efficacious retrospectively and since the issue of retrospectivity is pending adjudication before the Larger Bench of this Tribunal, therefore, we are unable to proceed till adjudication of the appeal. Adjourned to 16.04.2021 on which date file to come up for further proceedings before D.B.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

16.04.2021

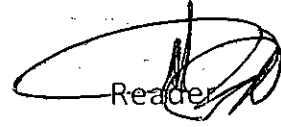
Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 05.08.2021 for the same as before.

  
Reader

11.5 2020

Due to COVID19, the case is adjourned to

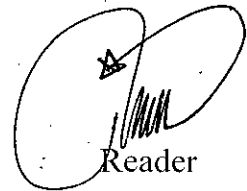
4/8/2020 for the same as before.

  
Reader

04.08.2020

Due to summer vacation case is adjourned to 05.10.2020

before D.B for the same.

  
Reader


05.10.2020


Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Sajid, ADO for respondents present.

Former requests for adjournment as his counsel is busy before District Courts at Mardan.

Adjourned to 23.11.2020 arguments before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

22.01.2020

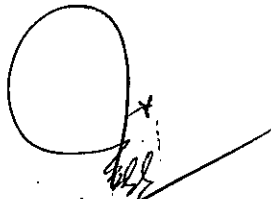
Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 11.03.2020 for further proceedings/arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

11.03.2020

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Sajid Khan, ADEO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.05.2020 before D.B.

  
Member

  
Member

16.09.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 18.10.2019 before D.B.

  
Member

  
Member

18.10.2019

Junior to counsel for the appellant present. Asst: AG for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available today. Adjourned. To come up for arguments on 02.12.2019 before D.B.


  
Member

  
Member

02.12.2019

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come u for arguments on 22.01.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member



06.03.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourn. To come up for arguments on 11.04.2019 before D.B.



(M. HAMID MUGHAL)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER

11.04.2019

Due to strike <sup>on the cell</sup> of Pakistan Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for arguments on 30.05.2019 before D.B.



(AHMAD HASSAN)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER

30.05.2019

Appellant in person and Mr. Muhammad Bilal, Head Constable alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 24.07.2019 for arguments before D.B.



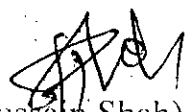
(HUSSAIN SHAH)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER

24.07.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.09.2019 before D.B.



(Hussain Shah)  
Member




(M. Amin Khan Kundi)  
Member

Service Appeal No. 721/2018

27.08.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present and made a request for adjournment. Granted. To come up for written reply/comments on 26.09.2018 before S.B.

  
(Ahmad Hassan)  
Member

26.09.2018

Mr. Naveed Iqbal, Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and requested for adjournment. Granted. To come up for written reply/comments on 14.11.2018 before S.B.

14.11.2018

Due to retirement of Hon'ble <sup>Chairman</sup> Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018. Written reply not received. Mr. Hameed Ur Rehman AD representative of respondents absent.

  
READER

31.12.2018

Appellant in person present. Mr. Muhammad Sajid, ADO (Litigation) alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents submitted. The appeal is assigned to D.B-II for rejoinder and arguments for 06.03.2019.

  
Muhammad Amin Khan Kundi  
Member

08.06.2018

Junior to counsel for the appellant present and seeks adjournment as senior counsel for the appellant is not available. Adjourned. To come up for preliminary hearing on 09.07.2018 before S.B.



Member


09.07.2018

Appellant ~~Said Shah~~ in person alongwith his counsel Mr. Adam Khan, Advocate present and heard on preliminary.

Contends that the appellant has been removed from service on the ground of absence whereas he was charged in criminal case and later on, he was acquitted from the charges by the competent court of law and that the appellant has been discharge from service but without adopting the legal and codal formalities.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections including limitation, if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments on 27.08.2018 before S.B.

Appellant Deposited  
Security & Process Fee





Chairman

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 722 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25/05/2018	<p>The appeal of Mr. Said Shah presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 25/5/18</p>
2-	29/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/06/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 722 - P/2018

Said Shah ~~vs~~ v/s The Secretary, etc;

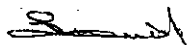
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4	FIR No.387/12.06.2013.	"B"	10 -- 11
5	Suspension order dated 31-01-2014.	"C"	12
6	Removal from service dated 07-05-2015.	"D"	13
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10	Vakalat Nama	---	20

Total:-20

Dated: 24.05.2018.

APPELLANT

  
(Said Shah)

Through;   
Muhammad Adam Khan  
Advocate Mardan

Before The Service Tribunal KPK Peshawar.

Service Appeal No. 722 / 2018.

Said Shah alias Said Ahmad Shah S/O Mian Muhammad Shah  
(Ex-PST Govt; Pry; School Shamilat Mardan) Resident of  
village Bakri Banda District Mardan.

**Appellant.**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 977  
Dated 25/5/18

**Versus**

1. The Secretary, Elementary & Secondary Education  
Deptt; KPK Peshawar.
2. The District Education Officer (Male) Mardan.
3. The Director Elementary & Secondary Education  
Deptt; KPK Peshawar.

**Respondents.**

-----

Appeal under Section-4 of the Service Tribunal Act, 1974, against the order of The DEO/ Respondent No.2 contained in Letter No.3132/G Dated 07/05/2015, whereby the Appellant is awarded the punishment of removal from service w.e.f 17/12/2014.

Filed to-day

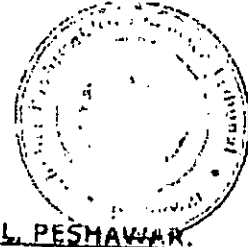
Registrar  
25/5/18

1. That the Appellant was appointed as P.S.T (BPS-07) by the E.D.O/Respondent No.2 on 29.06.2009 and posted in GHS Faqir Killi Mardan.

(Copy Annexure:- "A")

2. That the Appellant along with other persons was malafidely charged and arrested in a false Criminal Case under Section-489-F P.P.c vide FIR No.387 Dated 20/12/2012 of P.S Saddar, Mardan.

(Copy Annexure:- "B")



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

Appeal No: 721/2018

Date of Institution 25.05.2018

Date of Decision 05.08.2021

Sahibzada son of Umar Khan (Ex-PST Government Primary School Surkh-Dheri Mardan) R/O Baghi Aram (Koragh) District Mardan

(Appellant)

VERSUS

1. The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and two others.

(Respondents)

Mr. Adam Khan,  
Advocate

For appellant

Mr. Kabirullah Khartak,  
Additional Advocate General

For respondents

MR. AHMAD SULTAN TAREEN,  
MR. ATIQ-UR-REHMAN WAZIR

Chairman  
Member (Executive)

JUDGMENT

ATIQ-UR-REHMAN WAZIR, MEMBER (EXECUTIVE):-

Brief facts of the case are that the appellant was appointed as Primary School Teacher on 16-10-2004. While posted in a Primary School, an FIR No. 1014 dated 12-09-2012 U/Ss 302/324 PPC was registered against him, which compelled him to stay in hiding. The appellant remained fugitive from law for four years, until he was arrested in July, 2016, who remained in jail until his acquittal vide judgment dated

TESTED

KHYBER  
Pakhtunkhwa  
Tribunal  
Peshawar

03-01-2018. On the other hand, respondents initiated disciplinary proceedings against the appellant under Rule-9 of E&O Rules, 2011 by sending absence notice at his home address as well as publication of such notice in two leading newspapers. A fact finding inquiry was also conducted and after issuance of show cause notice, the appellant was removed from service vide order dated 09-01-2015 with effect from the date of his absence i.e. 13-09-2011. The appellant after acquittal, aspired to join his duty in the said school, but to his utter dismay, impugned order of his removal from service dated 09-01-2015 was handed over to the appellant, against which the appellant filed departmental appeal dated 29-01-2018, which was rejected vide order dated 14-05-2018, hence the instant service appeal instituted on 25-05-2018 with prayers that the appellant may be re-instated in service with all back benefits.

*Wk* Learned counsel for the appellant has contended that the appellant was mala fide charged in a criminal case vide FIR No 1014 dated 12-09-2012 U/Ss 302/324/34 PPC; that the appellant was tried in the court of session judge and acquitted on 03-01-2018; that absence of the appellant was not willful but due to compelling circumstances, which were beyond control of the appellant; that the appellant was not served with show cause notice, charge sheet/statement of allegations and has been condemned unheard. That the appellant has not been treated in accordance with law, as the appellant was not afforded any opportunity of defense. The learned counsel prayed that the appellant has been granted acquittal from the charge, hence he may be re-instated in service with all back benefits.

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



3. Learned Additional Advocate General appearing on behalf of respondents has contended that the instant appeal is badly time barred, as the impugned order was issued on 09-01-2015, whereas the appellant filed departmental appeal on 29-01-2018 with delay of more than three years and when departmental appeal is barred by time, the service appeal before this Tribunal is not competent; that the appellant remained absconder from law and as well as from duty for almost four years; that the appellant was proceeded against under the law and rule, but since he was absconder, hence he did not respond either to the absence notices sent at his home or to the publication of such notices in two leading newspaper; that an inquiry to this effect was also conducted and show cause notice was also served upon him, but he did not respond as he was absconder. He further argued that the august Supreme Court have held that even where a person is innocent, absconson amounts to showing mistrust in the judicial system; that to seek condonation of absence during absconson would amount to putting premium on such act, that when the appellant himself is not available for personal hearing, no rule of natural justice or requirement of law regarding notice or hearing or about regular inquiry had been infringed. Reliance was placed on 2017 SCMR 945, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 and 2021 SCMR 141.

Wk

4. We have heard learned counsel for the parties and have perused the record. Admittedly, the appellant remained absconder for almost four years with effect from 12-09-2012 until he was arrested on 26-07-2016. The respondents as per law and rule were required to issue suspension order of the appellant and wait for final decision of the trial court, which

**ATTESTED**  
Kishore Kumar  
Service Tribunal  
Peshawar

however was not done in case of the appellant in violation of article 194 of CSR. Record reveals that respondents were well aware of the fact that FIR was registered against the appellant, but the respondents ignored such important factor and only focused on his absence, which was contrary to the norms of natural justice, as main reason of his absence was registration of a criminal case against the appellant. The appellant was proceeded against in his absence and removed from service, without affording any opportunity of defense. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him. To this effect, the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

5. We are of the opinion that absence of the appellant was not wilful as nothing is available on record to show that the appellant was either habitual absentee or less efficient and as per stance of the appellant, he went in hiding as his life was at stake, though he was arrested and in due

**ATTESTED**

EXAMINER  
Member, Service Tribunal  
Peshawar

course and was honorably acquitted but the respondents did not consider his case and rejected his departmental appeal. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.

6. In view of the foregoing the instant appeal is accepted and the appellant is re-instated in service. The period of absconsion w.e.f 12-09-2012 to 26-06-2016 is excluded from his service and the period he remained in jail with effect from 27-06-2016 to 03-01-2018 is treated as extra ordinary leave without pay, whereas the period from 04-01-2018 until his arrival into his post is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
05.08.2021

*W W*  
(ATIQ-UR-REHMAN VAZIR)  
Member (E)

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*Ahmad Sultan Tareen*  
(AHMAD SULTAN TAREEN)  
Chairman

Date of Presentation of Petition 11/8/21  
Number 2600  
Copy 26 -  
Type 4 -  
Time 30 -  
Fee ---  
Date of Delivery of Copy 23-8-21

3. That resultantly, he was placed under suspension by the D.E.O (Male) Mardan vide letter dated 31-01-~~2014~~<sup>2014</sup> (Copy Annexure-"C").

4. That the D.E.O/ Respondent No.2 awarded the Appellant With the punishment of removal from service vide Endorsement No.3132/G Dated 07/05/2015, which was never communicated to Appellant.

(Copy Annexure "D").

5. That while persuing the fate of the disciplinary case, Appellant came across the impugned order, on 01-07-2015 and preferred departmental Appeal to the Respondent No.3/The Director on 19-08-2015.

(Copies Annexure:-"E").

6. That the Director/Respondent No.3 rejected the Departmental Appeal vide Endorsement No.428-30 dated 03-12-2015. But, the same was also not conveyed to Appellant, which he learnt about it on 23-04-2018.

(Copy Annexure:-"F").

### GROUNDS :-

The impugned orders are incorrect, illegal, void and against the principles of natural justice. Hence, the same are liable to be set-aside, on the following amongst many other grounds:-

- (i). that the impugned order is void, as the Appellant was not afforded the right of defence and he is condemned unheard.

2. that the Appellant was not issued, even, the charge Sheet /Show Cause notice and the statement of allegations. Thus, ~~the~~ whole of the proceedings including the impugned orders are void <sup>Hence,</sup> limitation does not run against the void order. Yet, application for condonation of delay is appended herewith.

(ii). that the impugned orders were not sent to Appellant on his residential address. But, the same were sent to the Headmaster, who did not convey the same to Appellant.

(iii). That the Appellant was charged malafidely and arrested in the criminal case under Section-489F of P.P.c vide FIR No.387 dated 12-06-~~2013~~<sup>2013</sup> of P.s SadarMardan and it was not possible for Appellant to perform his duties. His absence was not willful.

(iv). that the Appellant was acquitted from the said charge on 01-11-2013 by the court. (Copy Annexure:-"G").

(V). that the Appellant had not committed the alleged offence, he was charged malafidely in order to pressurize his family members.

- (vi). that the material point is not taken into consideration that the Appellant being in judicial lockup was not supposed to attend to his duty.
- (vii). that the Appellant had applied for grant of leave. But, the fate there of was not communicated to him.
- (viii). that sufficient leave is outstanding on the leave account of Appellant */balena Sheet. 1.*
- (ix). That the suspension period of Appellant was continued without express extension order.
- (x). that the subsistence allowance is never paid to Appellant for the whole of the suspension period.
- (xi). that the Appellant is jobless since the date of the impugned order.
- (xii). that the Appellant reserves the right to claim further grounds deemed necessary.

It is prayed that on acceptance of this Appeal, the Appellant may be ordered to be reinstated into service with back service *along with the subsistence allowance.* benefits along with any other relief, deemed appropriate by this Hon'ble Tribunal.

The costs of this appeal may be awarded

5  
in favour of Appellant against the Respondents.

Dated: - 24.05.2018.

Appellant

*Said Shah*  
(Said Shah)

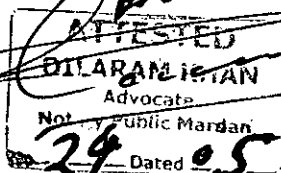
Through: - *Alian*  
Muhammad Adam Khan

AFFIDAVIT

I, Said Shah alias Said Ahmad Shah S/o Mian Muhammad Shah/the Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief.

Deponent

*Said Shah*  
(Said Shah)



Before The Service Tribunal Peshawar.

Appeal No. /2018.

**Said Shah v/s The Education Deptt; etc;**

Application for condonation of delay:-

1. That the Departmental Appeal is decided on merits without objection as to be time barred, Hence, the delay is deemed to have been condoned.
2. That the impugned orders were not communicated to Appellant. The moment, he learnt about the impugned order, he preferred the Representation and similar is the case of Appellate order.
3. That the Appellant was placed under suspension on 31-01-2014, which continued till the date of his removal from service, without express extension thereof.
4. That the appellant is condemned unheard, unto he was not issued the charged sheet, statement of allegation and even, the show cause notice. Hence, the impugned order is void one and limitation does not run against the void order.
5. That Valuable rights of Appellant are involved in the captioned Appeal, which needs adjudication on merits.



It is prayed that in case, the Captioned Appeal is considered, to be time barred, the delay, so occurred may kindly be condoned in favour of Appellant.

Dated: -24.05.2018.

Appellant

*Said Shah*  
(Said Shah)

Through:- *Adam Khan*  
Muhammad Adam Khan  
Advocate Mardan

**AFFIDAVIT**

I, Said Shah alias Said Ahmad Shah S/o Mian Muhammad Shahdo hereby state on solemn affirmation that the contents of this application are true and correct to the best of my knowledge and belief.

Deponent.

*Said Shah*  
(Said Shah)

*Said Shah*  
**ATTESTED**  
DILARAM KHAN  
Advocate  
Notary Public Mardan  
No. 24 Dated 05  
2018

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A

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY &amp; SECONDARY EDUCATION MARDAN

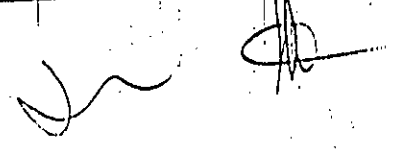
ANNEXURE

ATTACHED

## OFFICE ORDER.

Consequent upon the approval given by the District Selection Committee Mardan in the meeting held on 29-06-2009 in the Office of the Executive District Officer Elementary & Secondary Education Mardan. The following Appointments are hereby ordered against the Deceased Sons / Daughters Quota against the posts and BPS noted against each in the interest of Public Service with effect from their taking over charge.

S.No	Name / Father's Name	Address	D/O Death D/Service	Post / BPS	Name of school where appointed	Remarks
1.	Janab Ali S/O Meher Rahmaan	R/O Kandar Mardan	22-10-2005	PST BPS-07 (3530-190-9230)	GPS Qari Abad Mardan	A.V.P.
2.	Said Shah S/O Mia Muhammad Shah	R/O Bakri Banda Mardan	28-01-2006	PST BPS-07 (3530-190-9230)	GPS Faqir Killi	A.V.P.
3.	Inam Ul Haq S/O Muhammad Farooq	R/O Sheikh Yousaf T.Bahi	25-07-07	PST BPS-07 (3530-190-9230)	GPS Sharif Abad	A.V.P.
4.	Sadiq Akbar S/O Aqal Khan	R/O Dagi Lund Khawar	12-01-08	PST BPS-07 (3530-190-9230)	GPS Ahmad abad Garo	A.V.P.
5.	Wiqar Ali S/O Muhammad Nisar	R/O Gul Pur Hathian	23-04-2008	PST BPS-07 (3530-190-9230)	GPS Pirsaddi No.1	A.V.P.
6.	Asmat Naz D/O Janas Khan	R/O Bakhshali	05-09-87	PST BPS-07 (3530-190-9230)	GGPS Sreekh Sawal Dher	Due to non availability of post in her own UC, she is adjusted in the nearest UC against Vacant Post
7.	Salma D/O Barakat Khan	R/O Bijli Ghar	28-10-98	PST BPS-07 (3530-190-9230)	GGPS Ghala Dher	Due to non availability of post in her own UC, she is adjusted in the nearest UC against Vacant Post
8.	Saima Anum D/O Nargis Ara	R/O Babozai	28-06-03	PST BPS-07 (3530-190-9230)	GGPS Bharat Kheil Babozai	A.V.P.
9.	Shabina Begum D/O Kapoor Khan	R/O Enzargai Katlang	27-05-07	PST BPS-07 (3530-190-9230)	GGPS Sadiq Abad Jamal Garhi	Due to non availability of post in her own UC, she is adjusted in the nearest UC against Vacant Post
10.	Rabihat W/O Irshad Ali	R/O Kaudari Bala	16-08-08	PST BPS-07 (3530-190-9230)	GGPS Damin Koh T.Bhai	Due to non availability of post in her own UC, she is adjusted in the nearest UC against Vacant Post
11.	Taskeen Akhtar D/O Ribat Khan	R/O Qasim Toru	04-03-09	PST BPS-07 (3530-190-9230)	GGPS Muhammad Wali Killi	Due to non availability of post in her own UC, she is adjusted in the nearest UC against Vacant Post



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12.	Manzoor Ahmad S/O Hqsnul Ibrar	R/O Asif Killi T/Bahi	11-10-07	J/C BPS-07 (3530-190-9230)	GHS Pir Abad.	A V.P
13.	Muhammad Adil S/O Fazli Rabi	R/O Mayar	14-11-92	J/C BPS-07 (3530-190-9230)	GHSS Mayar	A V.P
14.	Khalil Ahmad S/O Hazrat Ullah	R/O Matta Showa	10-04-08	J/C BPS-07 (3530-190-9230)	GGHS Mian Khan	A V.P
15.	Muhammad Rafiq S/O Muhammad Zahir	R/O Shakar Mori Gujar Ghari	14-04-09	Sweeper BPS.1 (2970-90-5670)	GMS Ghaz Killi	A.V.P

**TERMS AND CONDITIONS:**

- 1- Their appointments are purely made on temporary basis in the light of appointment policy 2005 and liable to termination at any time without any notice / reason.
- 2- They are not entitled for Pension / Gratuity & G. P Fund under the appointment policy 2005 however they are entitled for Annual increment and other benefits admissible to them in the light of appointment policy.
- 3- They should produced their Age & Fitness certificate from the Medical Superintendent District Head Quarter Hospital Mardan before taking over charge and their age are not less and above as under:
- 4- Their Educational & Professional Documents should be verified from the Board / University and their pay will not be released before the receiving of verification of all documents.
- 5- No TA / DA is allowed.
- 6- Charge report should be submitted to all concerned.
- 7- The concerned principal / Head Master / DDO should personally verified the death of the Government Servant and submit there report to the undersigned with the remarks that no one has been appointed in the deceased quota before the concern official.

(HANIF ULLAH)

EXECUTIVE DISTRICT OFFICER  
(E & S) EDUCATION MARDAN

Endst: No. 5617-6/1

Dated Mardan the 29-6 /2009.

Copy for information to the: -

- 1- PS to Chief Minister NWFP, Peshawar.
- 2- PS to Minister for Education NWFP, Peshawar.
- 3- Director Elementary & Secondary Education Department NWFP, Peshawar.
- 4- Commissioner Mardan Division Mardan.
- 5- District Coordinating Officer Mardan.
- 6- District Nazim Mardan.
- 7- District Comptroller of Account Mardan.
- 8- District Officer Male & Female (E & S) Education Local Office.
- 9- Deputy District Officer (Male & Female) Primary Mardan & Takht Bhai.
- 10- Principal / Head Master / Head Mistress concerned.
- 11- Superintendent Local Office.
- 12- Accountant Local Office.
- 13- PA to EDO (E & S) Education Mardan.
- 14- Official Concerned.
- 15- General File.

*Hanif Ullah*

EXECUTIVE DISTRICT OFFICER  
(E & S) EDUCATION MARDAN

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ اجموعہ ضابطہ فوجداری

- ATTESTED  
ADAM KHAN

تاریخ وقت رپورٹ	۰۶/۱۱/۲۰۱۳	تاریخ وقت	۰۶/۱۱/۲۰۱۳
نام و سکونت اطلاع دہندہ	شاہنواز حسین شاہ صاحب سکونت کراچی		
مختصر کیفیت جرم (موضوع) حال اگر کچھ لایا گیا ہو۔	۱۵۹۴		
جائے وقوع قاتلانہ جرم سے اور دست	پشاور		
نام و سکونت ملزم	پشاور		
کارروائی جو پیش کیے گئے تھے یا اطلاع درج کرنے میں تاخیر یا تاوان و غیرہ	پشاور		
قاتلانہ سے روائی کا تاریخ وقت	پشاور		

ابتدائی اطلاع میں پورے درج کردہ مندرجہ بالا واقعہ میں شاہنواز حسین شاہ نے ایک حکم نامہ درج ذیل کے تحت پیش کیا گیا ہے۔

موضوع: شاہنواز حسین شاہ کے ساتھ کسی شخص نے کراچی میں ہونے والے واقعہ کے دوران میں ایک شخص کو قتل کیا۔

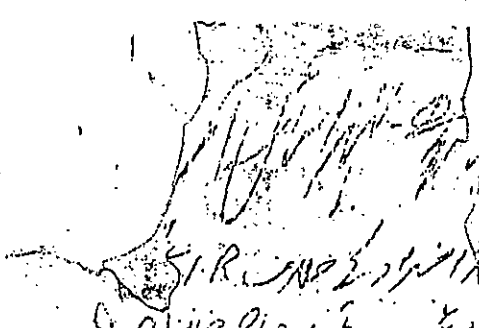
شاہنواز حسین شاہ کے ساتھ کسی شخص نے کراچی میں ہونے والے واقعہ کے دوران میں ایک شخص کو قتل کیا۔

شاہنواز حسین شاہ کے ساتھ کسی شخص نے کراچی میں ہونے والے واقعہ کے دوران میں ایک شخص کو قتل کیا۔

شاہنواز حسین شاہ کے ساتھ کسی شخص نے کراچی میں ہونے والے واقعہ کے دوران میں ایک شخص کو قتل کیا۔

شاہنواز حسین شاہ کے ساتھ کسی شخص نے کراچی میں ہونے والے واقعہ کے دوران میں ایک شخص کو قتل کیا۔

Advocate  
High Court  
District: Court Murdun



یہ سہ ماہی صوبہ سندھ کے آب و ہوا کے ساتھ ساتھ  
 مینجمنٹ کے نقطہ سے درج ذیل کے مینجمنٹ کے ساتھ ساتھ  
 پیمائش کا حکم ہمارے مابین اور اس کے ساتھ ساتھ  
 تعلیم و تربیت کے ساتھ ساتھ  
 کاروبار کے ساتھ ساتھ  
 کے ساتھ ساتھ  
 کے ساتھ ساتھ  
 کے ساتھ ساتھ

11-06-2013  
 0345930003  
 12/06/13

کتاب کے لیے تمام درجہ کار تیار کیا گیا ہے اور اس کے ساتھ ساتھ  
 ایک نو ماہی کی شہادت نامہ فراہم کیا گیا ہے اور اس کے ساتھ ساتھ

P-12

ANNEXURE

C

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.

ATTESTED

ADAM KHAN

OFFICE ORDER.

Mr. Said Shah PST GPS, Shamilat Mardan is hereby suspended from the Govt Service w.e.f 11-06-2013 in the light of FIR filed against him under section PPC 489 F Dated 11-06-2013 till the decision of the court.

Necessary entry this effect should be made in his Service Book.

(MUSHTAQ AHMAD)  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

Endst: No 758-61 P.F

Dated 31/01/2014.

Copy forwarded to the:-

1. Sub: Divisional Education Officer (M) Prys: Mardan with the remarks the explain with cogent reasons that why you have submitted the suspension case so much late i.e for a period of more then seven Months.
2. ASDEO Mardan Khass to explain that why he did not submitted the suspension case of the above teacher in time.
3. District Accounts Officer Mardan.
4. Official Concerned.

No 146  
Dated 1-2-14

S.D.E.O (M)  
Mardan.

DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) PRY: MARDAN.

NO 174 Dated 3/2/2014

Copy to these:

1. ASDEO (M) Circle Mardan Khass for information.
2. Teacher Concerned.
3. Head teacher GPS Shamilat Mardan.
4. DEO (M) Mardan w/x to his above.

Sub Divisional Education Officer  
(M) Prys: Mardan.



P-13 Amexid <sup>u</sup> <sup>u</sup> <sup>u</sup>

OFFICE OF THE DISTRICT EDUCATION  
OFFICER (MALE) E&SE MARDAN

Attested  
Aalam

OFFICE ORDER.

Whereas Mr. Said Shah PST GPS Sahmilat Mardan remained will full absent from duty with effect from 17-12-2014 till date without any permission/information.

Whereas the authorized officer sent three consecutive absence notices through concerned officer by registered cover on your home address for the resumption of your duty but you failed to resume your duty.

Whereas, the undersigned further published notice in daily Mashriq Peshawar & Express Peshawar dated 12-04-2015 but you neither personally did not appear before the undersigned nor you submitted any written justification within the stipulated period.

Now, therefore, the undersigned being the competent authority in exercise of powers conferred in the Efficiency and Disciplinary Rules 1973 revised in 2011, has been pleased to impose the major penalty i.e Removal from Service upon you Mr. Said Shah PST GPS Sahmilat Mardan with effect from the dated of your will full absence i.e 17-12-2014.

(HANIF ULLAH FAROOQI)  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

Endst. No. 3132/9 P. File

Dated 2/5 /2015.

Copy forwarded to the:-

1. P.S Secretary, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Deputy Commissioner Mardan.
4. District Monitoring Officer IMU Mardan.
5. SDEO (M) Primary, Mardan with the remarks to submit his service book for removal from service entry.
6. Mr. Mr. Said Shah PST C/O Head Teacher GPS Sahmilat Mardan.

District Education Officer  
(MALE) MARDAN

To

**The Director Elementary and Secondary Education  
KPK Peshawar.**

ATTESTED  
*Adnan Khan*  
ADAN KHAN

**SUBJECT: Appeal for reinstatement and cancelation of termination order of appellant Mr. Said shah s/o Mian Muhammad Shah PST (G.P.S shamilat Mardan)**

**Respectfully sheweth:**

1. That the appellant namely said shah s/o Mian Muhammad shah R/o Nisatta Road Bakri Banda Mardan was appointed as PST(G.P.S Shamilat) on 29/6/2009 and is a regular and punctual teacher.
2. That the appellant was charged in case FIR No. 387 U/S 489Fppc dated 12/6/2013 at P.S sadder Mardan.
3. That due to above mention FIR the appellant was suspended w.e.f 11/6/2013 on dated 31/1/2014.
4. That due to compromise between the parties the honorable additional session judge II Mardan released the appellant on bail. on dated 14/10/2013.
5. That due to above mentioned order of honorable court the DEO Mardan reinstated the appellant on 30.5.2014 w.e.f the date of his suspension which is 11/6/2013.
6. That when the trial was commenced in the above mention case the compromise which was affected in bail stage was not followed by the appellant and in this way non bail able warrant were issued against the appellant and declare absconder by the honorable court and in this way the appellant also remain absent from his duty and in this connection publication was issued in daily mashriq and express on dated



12/4/1015(copy of publication in newspaper and of court order sheets are attached here with).

7. That on 7/5/2015 the appellant removed from service by DEO mardan from the date of appellant full absence i.e is 17/12/2014 (copy of termination order is attach here with)
8. That in the above mentioned case the appellant was acquitted by the Judicial Magistrate II Mardan on 12/6/2015 (acquittal order is attached with).
9. That the authority used by the DEO Mardan is not according to the facts and used his authority without using his mind and full observation.
10. That if the instant appeal is not accepted the appellant will receive mental as well as financial lose because his absence is not intentional but due the facts mentioned above.
11. That the appellant is the only supporter of his family and his termination order will suffer him heavy financial and mental lose.

It is therefore prayed that instant appeal may kindly be admitted and order issued by the DEO Mardan on 7/5/2015 may kindly be set aside and the appellant may kindly be reinstated with previous benefits and other relief which this honorable director deems fit may also be granted.

Appellant



Said shah s/o main Muhammad shah

PST (G.P.S shamilat Mardan)

Date 19-8-15

P-16

"F"

ANNEXURE

**DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION**  
**KHYBER PAKHTUNKHWA**

ATTESTED  
*Adam Khan*  
ADAM KHAN

**ORDER.**

1. WHEREAS, Mr.Said Shah PST GPS Shamilat Mardan. Mardan was found absent from this duty w.e.f 01.11.2014 till date and he was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011 for the said charges.
2. AND WHEREAS, the above named PST teacher was charged in criminal case bearing FIR No.387 dated 12.06.2013 at Police Station Thana Sadaar Mardan.
3. AND WHEREAS, on finalty of proceeding DEO (M) Mardan imposed the major penalty of converting the above period as un-authorized leave from duty and removed from service.
4. AND WHEREAS, consequently he made appeal to the appellat authority Director E&SE vide 973 dated 03.09.2015.
5. NOW THEREFORE, in exercise of powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules.2011. The appellat authority is pleased to reject the appeal of the above PST teacher.

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

Endst: No. 428-30 /F No.141/PST (M) Mardan

Dated Peshawar the 3/11 /2015.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Mardan w/r to his No.6314 dated 19.09.2015.
2. Teacher concerned.
3. P.A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

*2/11/15*  
Deputy Director (Estb.)  
Elementary & Secondary Edu:  
Khyber Pakhtunkhwa Peshawar.  
*2/11/15*

P-17

ANNEXURE "G"

ATTESTED

ADAM KHAN

O-16  
11.6.15

Accused Mustin Shah not produced. Other two accused on bail present. Complainant present and submitted affidavit of compromise. Accused Mustin Shah be produced on 12-6-15

JM  
man

Order-17  
12.06.2015

Accused Saleem Shah produced in custody. Co-accused Yousaf Shah and Syed Ahmad Shah present on bail. APP for the State present.

Accused facing trial namely Salim Shah, Yousaf Shah and Syed Ahmad Shah sons of Mian Muhammad Shah all residents of Bakri Banda, District Mardan have been charged vide case FIR No. 387 dated 12.06.2013 under Section 489-F, PPC of Police Station Saddar, Mardan for commission of the offence.

On the previous date i.e. 11.06.2015 complainant Khanzada son of Shahzada resident of New Mian Gul Kille, Tehsil and District Mardan appeared before the Court and recorded his statement to the effect that he has patched up the matter with the accused facing trial unconditionally, pardoned them unconditionally and have got no objection upon their acquittal. Affidavit of compromise is Ex.CW 1/2 with copy of his CNIC as Ex CW 1/1.

In view of statement recorded by the complainant, compromise is allowed and accused facing trial stand acquitted from the charge leveled against them in the present case. Accused Saleem Shah is in custody, be released forthwith if not required in any other case of law. Remaining accused are on bail, bonds furnished by them are cancelled and sureties

(Contd)

EXAMINER  
Copying Department  
Sessions Court Mardan

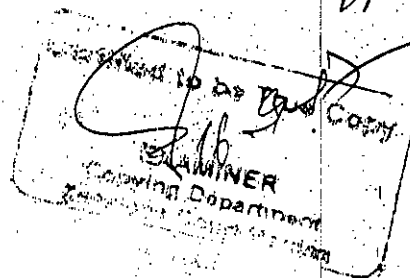
P-18

6-14  
28/4/15

✓ A PP present. Accd are not  
present fresh NBWA be  
(4) ~~via~~ → against the accd  
and notice their senties  
for 27-5-2015.  
Yours  
order

6-18  
27/5/15

A PP present. As per report  
of DPC the aad Saleem  
Shah and Yusuf Shah in  
judicial lock up in some  
other case. They be secured  
through vacuum bag. Full  
NBWA be used against  
the accused and for  
11-6-2015.  
Yours  
order



P-19

0-17  
(Contd)

thereunder are absolved from the liabilities towards the bonds. Case property be disposed of according to law after expiry period provided for appeal/revision.

File be consigned to record room after completion and compilation.

Announced:  
12.06.2015

(5)

70

(Nisar Muhammad Khan)  
Judicial Magistrate, Mardan.

**Nisar Muhammad Khan**  
Judicial Magistrate, Mardan

*Handwritten signature*

Application No	12-9-13
Date of Presentation of Application	16-6-13
Date on which order made	16-9-13
Date on which copy made	16-9-13
No. of pages	20
Print fee / Copying fee	
Urgent fee	
Signed of copyist	
Date of Delivery	16-9-13

Verified to be True Copy  
EXAMINER  
Copying Department  
Mardan District Magistrate

**VAKALAT NAMA**

In the Court of The Service Tribunal, Peshawar

Appeal No. \_\_\_\_\_ of 2018

Said Shah

(Petitioner)  
(Plaintiff)  
(Appellant)

**VERSUS**

The Education Deptt etc.

(Respondent)  
(Defendant)

I/we Said Shah the  
above noted Appellant do  
hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as  
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or  
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability  
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our  
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 24.05.2018

**N.W.F.P. Bar Council**

ADVOCATE  
High Court

ADAM KHAN

No. BC-09-0600

*A. Jahan*  
Secretary's Signature

Father's Name: BADSHAH GUL  
Address: VILL. GOJAR GARHI DISTT. MARDAN  
Office Tel: 0931-63011 Res Tel: 0931-63450  
Enrolment Date L.C: 03/09/1978  
Enrolment Date H.C: 31/05/1980  
Place of Practice: MARDAN  
Date of Birth: 04/04/1943  
Blood Group: AB+VE  
N.I.C.No. 16102-4612615-6

N.W.F.P. BAR COUNCIL

*Said Shah*

(Signature of Client)

*Adam Khan*

Accepted

خاندان

سازگاریها در 82

تعداد 387 نفر با 1/3 درصد 4894 نفر (82)

تعداد 100 نفر در 100 نفر

تعداد 100 نفر در 100 نفر

تعداد 100 نفر در 100 نفر  
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 722/2018

Said Shah S/O Mian Muhammad Shah Ex-PST GPS Shamilat Mardan R/O village Bakri  
Banda District Mardan .....Petitioner

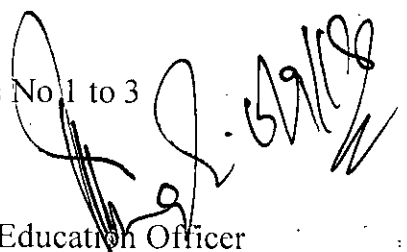
Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit & Reply of condonation of delay		01	07
2.	Copy of order of Removal	"A"	08	--
3.	Copy of letter of head teacher	"A-I"	09	--
4.	Copy of publications	"A-II" & "A-III"	10	11
5.	Copy of rejection order of departmental appeal	"B"	12	--
6.	Copies of notices	"C", "C-I", "C-II"	13	15
7.	Copy of Re- instatement Orders	"D"	16	--
8.	Copy of Judgment	"E"	17	18
9.	Copy of letter issued by the respondent	"F"	19	--

Respondents No 1 to 3

  
District Education Officer  
(Male) Mardan

Dated: \_\_\_\_\_



45  
✓

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 722/2018

Said Shah S/O Mian Muhammad Shah Ex-PST GPS Shamilat Mardan R/O village Bakri  
Banda District Mardan .....Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

Para Wise Comments on Behalf of Respondents No 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence the appeal is liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honorable Tribunal hence the appeal is liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence the appeal is liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That after fulfillment of all the codal formalities the appellant was removed from service vide order Endst No 3132/G dated 07-05-2015 in accordance with law.  
(Copy of order of Removal is attached as **Annex-"A"**)

FACT:

1. Para No 1 pertains to record, hence need no comments.
2. Para No 2 pertains to record, hence need no comments.
3. Para No 3 pertains to record, hence need no comments.

4. Para No 4 pertains to record, however the removal order was communicated to the appellant by the answering respondent through the head teacher of the appellant, and absence notice of the appellant was published in daily Mashriq and daily Express on dated 12-04-2015, hence need no comments. (Copy of removal order, correspondence of Head teacher & publication is as Annex "A", "A-I", "A-II" & "A-III").
5. Para No 5 pertains to record, hence need no comments.
6. Para No 6 needs no comments however the rejection order of departmental appeal was properly issued to the appellant vide Order No 428-30 dated 03-12-2015, hence need no comments. (Copy of rejection order of departmental appeal is as Annex "B").

GROUND:

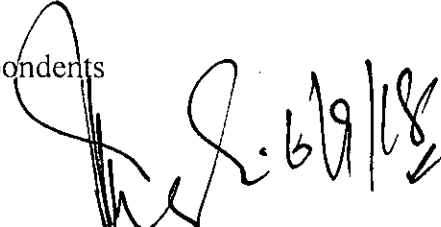
- I. Para No I is incorrect baseless against facts & law, as the removal order issued by the answering respondent is valid, despite notices the appellant badly failed to explain his position and did not appear before the answering respondent, hence denied. (Copy of notices is as annex "C", "C-I" & "C-II").
- II. Para No II is incorrect, baseless as proper notices for resuming of duty was served to the appellant but the appellant neither personally appeared before the answering respondent nor he submitted any written justification, hence denied. (Copy of notices is as annex "C", "C-I" & "C-II").
- III. Para No III pertains to personal record, hence need no comments.
- IV. Para No IV pertains to personal record, hence need no comments.
- V. Para No V pertains to personal record, hence need no comments.
- VI. Para No VI is incorrect, baseless as the material points is taken into consideration that the appellant was acquitted from the said charge on 1-11-2013 while the appellant was Re-instated in service w.e.f. the date of his suspension vide order No 4898 dated 30-5-2014, hence denied. (Copy of Re-instatement order & Judgment is as Annex "D" & "E").
- VII. Para No VII is incorrect, baseless as the appellant had applied for grant of leave but the respondent issued a letter vide No 1212 dated 18-2-2015 with the remarks that due to his leave the school will suffer. Hence appellant may be directed to resume his duty immediately, in case of failure disciplinary action will be taken

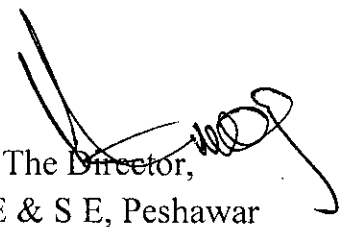
against the appellant under E & D Rules 1973, & Revised in 2011. Hence denied.  
(Copy of the letter is as Annex "F").

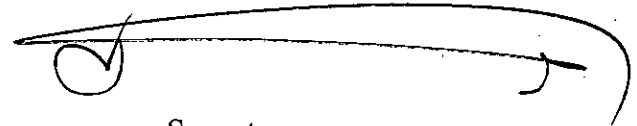
- VIII. Para No VIII pertains to record, however the school would have to suffer a lot by the leave of the appellant, hence need no comments.
- IX. Para No IX is incorrect, baseless which is thoroughly explained supra in the Para VII, hence denied.
- X. Para No X pertains to record, hence need no comments.
- XI. Para No XI pertains to personal matters, hence need no comments.
- XII. That the respondent seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.

Respondents

  
District Education Officer  
(Male) Mardan

  
The Director,  
E & S E, Peshawar

  
Secretary,  
E & S E, Peshawar

42  
L

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 722/2018

Said Shah S/O Mian Muhammad Shah Ex-PST GPS Shamilat Mardan R/O village Bakri  
Banda District Mardan .....Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

Reply to Application for condonation of delay.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the petitioner has got no cause of action & locus standi to file the instant application.
2. That the application in hand is not maintainable in its present form.
3. That the appellant has not come to this Honorable Tribunal with clean hand.
4. That the delay has not been justified by the petitioner.
5. That the appellant is estopped by his own conduct.
6. That the appellant has concealed the material facts from this Honorable Tribunal hence liable to be dismissed.

ON FACTS:

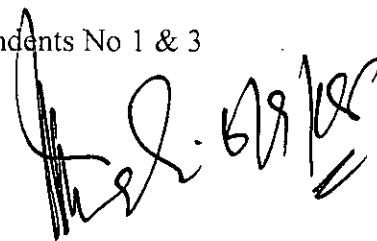
1. Para No 1 is incorrect as the departmental appeal is decided after all codal formalities, hence denied.
2. Para No 2 is incorrect, as the removal order was communicated to the appellant by the answering respondent through the head teacher of the appellant, hence denied.
3. Pare No 3 is incorrect, baseless as the appellant was acquitted from the said charge on 1-11-2013 while the appellant was Re-instated in service w.e.f. the date of his suspension vide order No 4898 dated 30-5-2014, hence denied.

- 4 Para No 4 is incorrect, as proper notices for resuming of duty was served to the appellant but the appellant neither personally appeared before the answering respondent nor he submitted any written justification, hence denied.
- 5 Para No 5 needs no comments.

W/  
✓

Therefore it is humbly prayed that keeping in view the above mentioned fact, the instant application along with appeal may kindly be dismissed with cost.

Respondents No 1 & 3  
Through



District Education Officer  
(Male) Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 722/2018


Said Shah S/O Mian Muhammad Shah Ex-PST GPS Shamilat Mardan R/O village Bakri  
Banda District Mardan .....Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

AFFIDAVIT

I, Mr. Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
Deponent 6/9/18  
Sajid Khan  
16101-6005318-5



OFFICE OF THE DISTRICT EDUCATION  
OFFICER (MALE) E&SE MARDAN

OFFICE ORDER.

Whereas Mr. Said Shah PST GPS Sahmilat Mardan remained will full absent from duty with effect from 17-12-2014 till date without any permission/information.

Whereas the authorized officer sent three consecutive absence notices through concerned officer by registered cover on your home address for the resumption of your duty but you failed to resume your duty.

Whereas, the undersigned further published notice in daily Mashriq Peshawar & Express Peshawar dated 12-04-2015 but you neither personally did not appear before the undersigned nor you submitted any written justification within the stipulated period.

Now, therefore, the undersigned being the competent authority in exercise of powers conferred in the Efficiency and Disciplinary Rules 1973 revised in 2011, has been pleased to impose the major penalty i.e Removal from Service upon you Mr, Said Shah PST GPS Sahmilat Mardan with effect from the dated of your will full absence i.e 17-12-2014.

(HANIF ULLAH FAROOQI)  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

Dated 7/5 /2015.

Endst: No. 3132/9 P. File

Copy forwarded to the:-

1. P.S Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Deputy Commissioner Mardan.
4. District Monitoring Officer IMU Mardan.
5. SDEO (M) Primary Mardan with the remarks to submit his service book for removal from service entry.
6. Mr. Mr. Said Shah PST C/O Head Teacher GPS Sahmilat Mardan.

*[Handwritten signature]*

*[Handwritten signature]*  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

گورنر صاحب کی ای کو صاحب رمدوانی مردان

صناب عالی

گزارش سود بانہ حضور انور سے آئے اندر شہزادہ آ. ی. م.

۱۳ بی این شہزادہ سکول ڈیوٹی کے بارے میں جو دو نوٹس

جاری کیے تھے ہم نے جن کو بھیجی تھی۔ کہیں ابھی تک

وہ ڈیوٹی لیک سکول حاضر نہ ہوا۔

لینڈ آرٹ صاحبان کو مطلع کیا جاتا ہے۔

الارض

ولی خان لارڈ لارڈ ۱۳ بی این شہزادہ

cc: ab  
tham

7/3/2015



مشتبه: حنیف اللہ ڈسٹرکٹ ایجوکیشن آفیسر

31 Annex A II

http://www.dailymashriq.com

اللہ ہی کیلئے ہیں مشرق و مغرب القرآن

DAILY MASHRIQ PESHAWAR

روزنامہ مشرق  
سید تاج میر شاہ  
عبدنو کے بانی

مشرق

مسلل اشاعت کے 48 سال

ABC CERTIFIED

جلد 48

توزیر 2 جمادی الثانی 1436ھ 12 اپریل 2015ء 27 جتر قیمت 18 روپے

InfoKPGovt \* @ infoKPGovt \* Send KP to 8333 INF(P)2021

نوٹس غیر حاضری

آپ درج ذیل کلاس نور اساتذہ اعلیٰ ڈیوٹیوں سے بغیر کسی وجہ غیر حاضر ہیں۔ لہذا آپ کی غیر حاضریوں کی بناء پر  
حکمہ ہذا نے آپ تمام کے خلاف انکوائریاں مقرر کی ہیں اور انکوائری انصران نے آپ تمام کے خلاف انکوائری کر کے  
آپ تمام کے غیر حاضریوں کی تصدیق کی ہے اور آپ کے خلاف قانونی کارروائی کی سفارش کی ہے جس کی بناء پر  
آپ کے گھر کے چلن پر آپ تمام کو نوٹس بھیج دیے گئے ہیں لہذا اب آپ تمام کو بذریعہ نوٹس ہذا مطلع کئے  
جاتے ہیں کہ آپ تمام اس نوٹس کے اشاعت کے چھ دنوں کے اندر اندر اعلیٰ ڈیوٹی پر حاضر ہو کر مجاز آفیسر کو اعلیٰ غیر  
حاضری کی مستعمل وجہ بتائیں۔ بصورت دیگر آپ کے خلاف مجوزہ قانون 2011ء کے مطابق تادیبی کارروائی کی  
جائے گی۔ جس میں آپ تمام کو نوٹس سے درخواست کئے جاسکتے ہیں۔

نمبر شمار	نام مدرسہ سکول	تاریخ غیر حاضری
1	انجاز امر چوکیدار گورنمنٹ پرائمری سکول نمبر 1 گھٹ مردان	19.12.2013
2	سید شاہ PST گورنمنٹ پرائمری سکول شاملات مردان	17.12.2014
3	سلیم شاہ گورنمنٹ پرائمری سکول بکری باغہ	16.04.2014
4	خوشید خان PET گورنمنٹ مل سکول سید آباد	16.09.2014
5	درویش خان PST گورنمنٹ پرائمری سکول ہاجڑو کورونہ	02.08.2014
6	جیل خان PST گورنمنٹ پرائمری سکول پراتا ہوتی	03.10.2014
7	نواس خان Sweeper گورنمنٹ اہلی سکول فارم کورونہ	15.06.2012
8	نور محمد چوکیدار گورنمنٹ پرائمری سکول نمبر 1 جہا آباد	09.10.2014

المشتبه:

حنیف اللہ ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) ضلع مردان

InfoKPGovt \* @ infoKPGovt \* Send KP to 8333 INF(P)2038

پتہ: قلیتہ، مردان

DAILY EXPRESS



SUNDAY, APRIL 12, 2015

پاکستان کے 11 شہروں سے بیک وقت شائع ہونے والا واحد اخبار  
جلد 13 شماره 193 | اتوار 22 جمادی الثانی 1436ھ 12 اپریل 2015ء صفحات 42 قیمت 18 روپے

### نوٹس غیر حاضری

آپ درج ذیل کلاس نور اساتذہ اپنی ذیلیوں سے بغیر کسی وجہ غیر حاضر ہیں۔ لہذا آپ کی غیر حاضریوں کی بناء پر محکمہ ہڈانے آپ تمام کے خلاف انکوائریاں مقرر کی ہیں اور انکوائری افسران نے آپ تمام کے خلاف انکوائری کر کے آپ تمام کے غیر حاضریوں کی تصدیق کی ہے اور آپ کے خلاف قانونی کارروائی کی سفارش کی ہے جس کی بناء پر آپ کے گھر کے چوں پر آپ تمام کو نوٹس بھیج دیئے گئے ہیں لہذا اب آپ تمام کو بذریعہ نوٹس ہڈا مطلع کئے جاتے ہیں کہ آپ تمام اس نوٹس کے اشاعت کے چودہ دن کے اندر اندر اپنی ذیلی پر حاضر ہو کر مجاز آفیسر کو اپنی غیر حاضری کی مستول وجہ بتائیں۔ بصورت دیگر آپ کے خلاف مجوزہ قانون 2011ء کے مطابق تادیبی کارروائی کی جائیگی۔ جس میں آپ تمام کو نوٹس سے برخاست کئے جاسکتے ہیں۔

نمبر شمار	نام مدرسہ سکول	تاریخ غیر حاضری
1	عجاز احمد چوکیدار گورنمنٹ پرائمری سکول نمبر 1 گھٹ مردان	19.12.2013
2	سید شاہد PST گورنمنٹ پرائمری سکول شاملات مردان	17.12.2014
3	سلیم شاہ گورنمنٹ پرائمری سکول بکری باڈھ	16.04.2014
4	خورشید خان PET گورنمنٹ ڈیل سکول سید آباد	16.09.2014
5	درویش خان PST گورنمنٹ پرائمری سکول باجوڑ کورونہ	02.08.2014
6	جمیل خان PST گورنمنٹ پرائمری سکول پراہوتی	03.10.2014
7	نواس خان Sweeper گورنمنٹ ہائی سکول فارم کورونہ	15.06.2012
8	نور محمد چوکیدار گورنمنٹ پرائمری سکول نمبر 1 پیر آباد	09.10.2014

المشتمرو:

INF(P)2038

حیف اللہ ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) ضلع مردان

**DIRECTORATE OF ELEMENTARY-AND SECONDARY EDUCATION**  
**KHYBER PAKHTUNKHWA**

**ORDER.**

1. WHEREAS, Mr. Said Shah PST GPS Shamilat Mardan. Mardan was found absent from this duty w.e.f 01.11.2014 till date and he was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011 for the said charges.
2. AND WHEREAS, the above named PST teacher was charged in criminal case bearing FIR No.387 dated 12.06.2013 at Police Station Thana Sadaar Mardan.
3. AND WHEREAS, on finalty of proceeding DEO (M) Mardan imposed the major penalty of converting the above period as un-authorized leave from duty and removed from service.
4. AND WHEREAS, consequently he made appeal to the appellant authority Director E&SE vide 973 dated 03.09.2015.
5. NOW THEREFORE, in exercise of powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules.2011. The appellant authority is pleased to reject the appeal of the above PST teacher.

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

Endst: No. U28-30 /F No.141/PST (M) Mardan

Dated Peshawar the 3/12 /2015.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Mardan w/r to his No.6314 dated 19.09.2015.
2. Teacher concerned.
3. P.A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

2/12/15  
Deputy Director (Estb :)  
Elementary & Secondary Edu:  
Khyber Pakhtunkhwa Peshawar.

نوٹس نمبر ۱

Annex 'C'

13  
13

\*

OFFICE OF THE ASSISTANT SUB DIVISIONAL EDUCATION OFFICER (M) CIRCLE MARDAN KHASS.

28

TO.

SAID SHAH PST GPS SHAMILAT

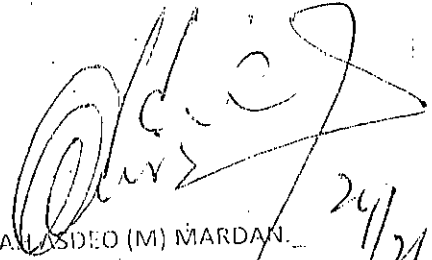
SUBJECT LEAVE.

YOUR LEAVE APPLICATION HAS BEEN REJECTED BY HONOURABLE DEO (M) MARDAN.  
HENCE YOU ARE DIRECTED TO RESUME YOUR DUTY AT SCHOOL IMMEDIATELY  
OTHERWISE DISCIPLINARY ACTION WILL BE TAKEN AGAINST YOU UNDER E&D RULES  
REVISED IN 2011.

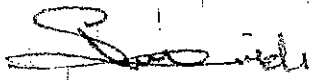
COPY TO

- 1 DEO (MALE) MARDAN
- 2 SDEO Male Mardan.
- 3 HEAD TEACHER GPS SHAMILAT.

TAHIR SHAH SDEO (M) MARDAN.



24/2/15



25-02-15

تاریخ	
کل نمبر	

دستخط ہیڈ ماسٹر

Office Of The Assistant District Education Officer (M) Circle Mardan Khass.

To,

Said Shah PST GPS Shamillat Mardan.

Subject: 2nd Notice to Resume duty at School.

Your leave has not been sanctioned by high ups of the Education Department

Vide DEO (M) Mardan order No 1212.dated 18/2/2015.

Hence you are once again directed to resume your duty at school immediately

In case of failing disciplinary action will be taken against you under E & D rules 1973,

Revised in 2011.

  
Tahir Shah ASDEO (M),

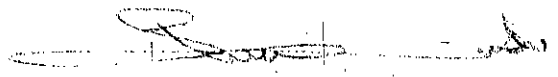
Circle Mardan Khass.

No 121 dated 05/03/2015.

5/3/15

Copy forwarded to:

1. SDEO (M) Primray Mardan.
2. DEO (M) Mardan.
- ✓ 3. Head Teacher GPS Shamillat.

  
05/03/2015

(26)

Annex C II (13)

1

OFFICE OF THE ASSISTANT SUB DIVISIONAL EDUCATION OFFICER (M) CIRCLE MARDAN KHASS.

TO

✓

SAID SHAH PST GPS SHAMILAT MARDAN.

SUBJECT 3rd NOTICE TO RESUME DUTY AT SCHOOL.

31

THE UNDERSIGNED HAS INFORMED YOU THROUGH 1st NOTICE ON 24/2/2015 TO RESUME YOUR DUTY AT SCHOOL .YOU HAVE RECEIVED THAT NOTICE ON 25/2/2015.BUT NOT RESUMED YOUR DUTY AT SCHOOL. ON 05/3/2015 ONCE AGAIN ANOTHER NOTICE WAS SENT TO YOU WHICH YOU HAVE RECEIVED THROUGH YOUR SCHOOL HEAD TEACHER ON 05/3/2015.BUT ONCE AGAIN YOU FAILED TO RESUME YOUR SCHOOL DUTY . THROUGH THIS 3rd NOTICE ONCE AGAIN YOU ARE DIRECTED TO RESUME YOUR SCHOOL DUTY IMMEDIATELY OTHERWISE DISCIPLINARY ACTION WILL BE TAKEN AGAINST YOU UNDER E&D RULES REVISED IN 2011.

TAHIR SHAH ASDEO (M) MARDAN

*[Handwritten Signature]*  
19/3/15

ENDST NO 124/196 DATED 19/3/2015.

COPY TO;

1 DISTRICT EDUCATION OFFICER (M)MARDAN.

2 HEAD TEACHER GPS SHAMILAT.

پاری  
کل میز

دستخط ہیڈ ماسٹر

Annex "D" (16)

95

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.  
RE-INSTATEMENT.**

Consequent upon the decision of the Honorable Court Additional Session Judge-II, Mardan announced on 01-11-2013, Hence Mr. Said Shah PST GPS, Shamlat Mardan is hereby Re-Instated in service w.e.f the date of his suspension.

Note:-

Necessary entry to this effect should be made in his service book. Charge reports should be submitted to all concerned.

(HANIF ULLAH FAROOQI)  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

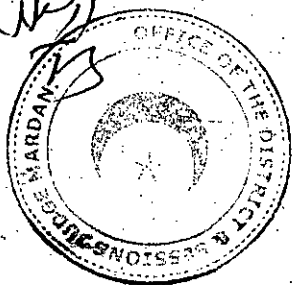
Endst: No. 1898 /P.File

Dated 29/5 /2014.

Copy forwarded to the:-

1. Sub-Divisional Education Officer (M) Pzy: Mardan. *al-jwils/book*
2. District Comptroller of Accounts Mardan.
3. Official Concerned.

*ms*  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN



O-2  
25.10.2013

17  
Anna E - (17)  
2013 358/BBA

Accused/petitioner on ad interim bail and complainant present. Record not received, the same be positively requisitioned for 01.11.13.

(Ikhtiar Khan)  
AD&SJ-II, Mardan.

**IN THE COURT OF IKHTIAR KHAN,**  
**Additional Sessions Judge-II, Mardan**

BBA No. 358/BBA of 2013

**"YUSAF SHAH & SAID AHMAD SHAH -VS- STATE"**

Date of institution .....14.10.2013  
Date of decision .....01.11.2013

**ORDER**

Accused/petitioners Yousaf Shah, Said Ahmad Shah on ad-interim pre arrest bail with counsel, Dy.PP Azhar Ali for the State and complainant Khanzada present. Record received.

The accused named above have prayed for concession of pre arrest bail in case FIR No.387 dated 12.06.2013 under sections 489-F PPC of P.S Saddar (Mardan) and ad interim bail was granted to them on 14.10.2013.

01.11.13

Certified to be True Copy  
[Signature]  
Additional Sessions Judge-II, Mardan.



23


J

IN THE COURT OF AD & SJ-II, MARDAN

14/10/13

BBA

submitted. Checked and put up for today.

  
Reader to  
ASJ-II/Duty Sessions Judge  
Mardan

14.10.2013

BBA petition submitted. be entered in its relevant register.

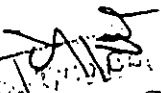
Petitioners Yousaf Shah and Said Ahmad shah both sons of Muhammad Shah apprehending their arrest in case FIR No.387 dated 12.06.2013 registered at P.S Saddar, Mardan under Section 489-F PPC.

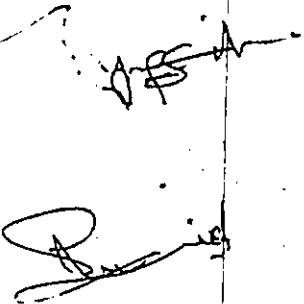
Contends malafide and false implications. The petition is duly supported by an affidavit.

In the absence of any record before me the petitioners are admitted to interim pre-arrest bail in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of this Court. The petitioners are directed to join investigation as and wherein required by the I.O.

Notice and record for  
25-10-13.

(IKHTIAR KHAN)  
Addl: Sessions Judge-II,  
Mardan.

  
Certified to L. Khan  
Copy  
Mardan



18

At the very outset counsel for the accused/petitioners submitted at the bar that the parties have effected compromise. To this effect statement of Khazada complainant recorded, wherein he stated that he has entered into genuine compromise with the accused/petitioners and do not want to prosecute them furthermore. The compromise deed is Ex PZ. He has also expressed his no objection upon the confirmation of pre-arrest bail of the accused/petitioner.

The offence for which the accused/petitioners are charged is compoundable in nature and the complainant can compound the same within the meaning of section 345 Cr.P.C. Accused/petitioners have already joined the investigation, thus no useful purpose shall be served if the physical custody of the accused/petitioners are given to the police, so I accept the compromise and the ad-interim pre arrest bail already granted to the accused/petitioners are hereby confirmed on exiting bonds. Requisitioned record alongwith copy of this order be returned and this Court file be consigned to record room after its completion.

Announced.  
Dated. 01.11.2013

(IKHTIAR KHAN)  
ADDL. Sessions JUDGE-IT,  
MARIAN.

Name of Applicant	Pro 719.5 dated 24/11/14
Date of Presentation	26/11/14
Date on which...	26/11/14
Date on which copy...	07/12
No's of...	
Court Fees	
Urgent fee	
Signed of Court	
	26/11/14

Certified to be True Copy  
26/11/14

Annex F - (17)

81

Office Of The Assistant District Education Officer (M) Circle Mardan Khass.

To,

Said Shah PST GPS Shamillat Mardan.

Subject: 2 nd Notice to Resume duty at School.

Your leave has not been sanctioned by high ups of the Education Department

Vide DEO (M) Mardan order No 1212 dated 18/2/2015.

Hence you are once again directed to resume your duty at school immediately

In case of failing disciplinary action will be taken against you under E & D rules 1973,

Revised in 2011.

  
Tahir Shah ASDEO (M),

Circle Mardan Khass.

Endst no: 121 dated 5/3/15.

~~No 121 dated 05/03/2015.~~

Copy forwarded to:

1. SDEO (M) Primray Mardan.
- ✓ 2. DEO (M) Mardan.
3. Head Teacher GPS Shamillat.

① - 1

فولجان  
(Lit-11)

7.12

7.12.1  
① 114.1

service w.e.f 17.12.2014 with all back benefits. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10<sup>th</sup> day of October, 2022.*

**(KALIM ARSHAD KHAN)**

**Chairman**

**(FAREEHA PAUL)**

**Member (E)**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 160/2016**

BEFORE:      MRS. ROZINA REHMAN                      ...      MEMBER (J)  
                    MISS FAREEHA PAUL                              ...      MEMBER (E)

**Ikram Noor, JCT Surgical, Bacha Khan Medical Complex, Swabi.**

... (Appellant)

Versus

1. Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Swabi.
4. Medical Superintendent, Bacha Khan Medical Complex, Swabi.

... (Respondents)

Mr. Muhammad Asif Yousafzai  
Advocate

...                      For appellant

Mr. Muhammad Adeel Butt  
Addl. Advocate General

...                      For respondents

Date of Institution.....22.02.2016

Date of Hearing.....19.07.2022

Date of Decision.....19.07.2022

**JUDGMENT**

**FAREEHA PAUL MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 06.11.2015 whereby the appellant was terminated from service alongwith recovery of Rs. 358554/-, with the prayer that on acceptance of the appeal the impugned order may be set aside and he may be reinstated in service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the District Health Officer, Swabi/respondent No. 3 advertised various post in newspaper dated 26.08.2013 including post of JCT surgical. Requisite

Before The Service Tribunal, Peshawar.

Appeal No. 722/2018

Hearing 06.03.2019

Said Shah v/s The Secy, E.S. E Deptt, etc

Rejoinder:-

1 to 11. All the preliminary objections, raised by Respondents are incorrect, vague and false, based on malice on the part of Respondents. Even, the Appellant is condemned without holding proper proceeding and specially Facts:- enquiry proceedings.

1 to 3:- incorrect & based on malice. All the relevant records are in their custody. Denied.

4. incorrect, false and misleading. Denied. It is clearly admitted in the Appellate order dated 03/12/2015 (copy Annexure - B/Page - 12 with the comments) that the Respondents Appellant is charged in a criminal case. Hence, the Respondents were supposed to address all the communications on his home address. There is no justification to address the same on school address. Similar is the position of advertisement. Facing risk to his life & being under suspension, the correspondence were supposed to be sent to home address.

5. As para - 1 to 3, above.

6. Same as in para - 4, above.

Grounds:- I & 2:- Not replied, nor denied. Stands admitted on their part.

Sub para (I). incorrect as per the foregoing paragraphs. Denied.

Sub para (II). incorrect, as per details mentioned above. Denied.

Sub para (III to V). incorrect, false & based on malice on the part of replying/answering Respondents. Denied.

VI. ——— incorrect & misleading. Denied. The relevant order was not communicated to Appellant. yet, the referred order is in respect of grant of BBA & not acquittal. P-10

VII. Incorrect. Denied. Although the Relevant letter was not conveyed to Appellant. yet, facing the life risk, it was not possible for Appellant to come out of his office house till Companion was effected.

VIII. Incorrect, unjustified. Hence, denied. The Appellant had sufficient leave on his credit. Details given above.

IX. Incorrect. Denied. The prolong suspension was illegal & even condemned under the relevant Rules.

X + XI. Incorrect & misleading. Denied.

XII. Needs no reply.

It is prayed that on acceptance of the Captioned Appeal, setting aside the impugned order, the Appellant may be re-instated into service with back service benefits alongwith costs.

Dated 06.03.2019

Appellant  
Said Shah  
(Said Shah)

through:- Aulram

Affidavit

I, Said Shah / the Appellant, do hereby state on solemn affirmation that the contents of the Appeal, as well as, this rejoinder are true & correct to the best of my knowledge and belief and the objections raised in comments are false, incorrect and misleading.

Deponent

Said Shah  
(Said Shah)

Identified by me:

Aulram

Aulram  
NOTARIES  
SILARAM KHAN  
Advocate  
Notary Public Mardan  
No. 06 Dated 03  
2019